

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Oshkosh Service Center
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731
TELEPHONE 920-424-3050
FAX 920-424-4404

December 18, 2008

Mr. Robert Buckingham
Community Development Authority of the
City of Neenah
211 Walnut St
Neenah, WI 54956

Winnebago County
FID: 471179720
WDNR VPLE #: 06-71-551109
WDNR Gen Prop #: 07-71-550924
& 07-71-552208
WDNR ERP #: 02-71-550735

Subject: Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed, 201, 207, 225 W. Wisconsin St. and adj. to 225 W. Wisconsin St. (former Canadian National RR – Parcel B), Neenah, WI

Dear Mr. Buckingham:

We have reviewed your request dated December 3, 2008 and addendums dated December 4 (Exhibit C to Section III), December 8 (revised Ex. A to Sec. II, revised Ex. B to Sec. IV.A., new Ex. V to Z to Sec. V.B.), December 11 (revised Ex. B and S to Sec. V.B.) and December 18, 2008 (new Ex. AA to Sec. V.B.) for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code. Based on that evaluation, the Department is issuing this general grant of exemption from the prohibitions contained in s. NR 506.085, Wis. Adm. Code. You must comply with the conditions of this grant of exemption in order to maintain the exemption. This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the department for approval.

Please review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems* PUB-RR-685 to assist you in preventing environmental or safety problems during and after development. We would like to particularly draw your attention to the public safety risk posed by the explosive potential for methane gas that may be present on a property due to the presence of decomposing solid waste.

You are reminded that this approval does not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements. If you have any questions concerning this letter, please contact Jennifer Borski at 920-424-7887 or by email to jennifer.borski@wisconsin.gov.

December 18, 2008

Page 2 of 9

Conditional Case-by-Case Grant of Exemption
P H Glatfelter Redevelopment – Base Construction
WDNR VPLE #: 06-71-551109
WDNR Gen Prop #: 07-71-550924 & 07-71-552208
WDNR ERP #: 02-71-550735

Sincerely,



Bruce Urban
Remediation and Redevelopment Program Supervisor, Northeast Region

Attachment: *Revised Exhibit A to Section II (12/17/08)*, Borehole, Groundwater and Vapor Well Locations, Figure 2 (Revised 12/17/08)

c: William P. Scott, Gonzalez Saggio & Harlan, 225 E Michigan St, Fourth Floor, Milwaukee, WI 53202
Skip Glor, Northern Environmental, 12075 Corporate Parkway, STE 210, Mequon, WI 53092
Chris Haese, Principal Planner, City of Neenah, PO Box 426, Neenah, WI 54957-0426
J. Borski – DNR, Oshkosh
File copy- WA/3, Madison and WA, Green Bay

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION
FOR
DEVELOPMENT ON A PROPERTY
WHERE SOLID WASTE HAS BEEN DISPOSED

FINDINGS OF FACT

The Department finds that:

1. The Community Development Authority of the City of Neenah owns the property located at 201, 207 and 225 West Wisconsin Avenue and adjacent to 225 West Wisconsin Avenue (former Canadian National RR – Parcel B), Neenah, Wisconsin, (“the Property”).
2. Solid waste has been disposed of at this Property and remains at this Property.
3. The Community Development Authority of the City of Neenah has submitted a request dated December 3, 2008 and addendums dated December 4, December 8, December 11 and December 18, 2008 for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. The request has been submitted under the seal of a professional engineer or a professional geologist relating to the proposed development and the environmental conditions at the Property.
4. Based upon the information provided to the Department, the proposed development at the Property is not expected to cause future exceedances of applicable soil and groundwater standards.
5. Additional documents considered in review of the exemption request include the following:
 - Conditional Case-by-Case Grant of Exemption for the Demolition of Above-Grade Structures on a Property Where Solid Waste has been Disposed, 201, 207 and 225 W. Wisconsin St., Neenah, WI, WDNR VPLE #: 06-71-551109, WDNR Gen Prop #: 07-71-550924, dated July 1, 2008, issued to Mr. Robert Buckingham, Community Development Authority of the City of Neenah.
 - Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed, Canadian National RR – Parcel B, adj. to 225 W Wisconsin Ave, Neenah, WI, WDNR BRRTS #: 07-71-552208, dated August 28, 2008, issued to Mr. Robert Buckingham, Community Development Authority of the City of Neenah.
 - December 8, 2008, 10:33 AM, electronic mail from Bill Scott (Gonzalez Saggio & Harlan LLP) to Jennifer Borski (Department) and titled *RE: Table of Contents for Specs* that clarify the deepest penetration planned for the Plexus Corporation Headquarters pilings is 40 feet below ground surface and that each piling location will saw cut the existing foundation for appropriate sealing as proposed in the application.

- December 8, 2008, 11:26 AM, electronic mail from Bill Scott (Gonzalez Saggio & Harlan LLP) to Jennifer Borski (Department) and titled *Neenah Site-Wide Exemption – Semi-volatiles* that discusses the likely source for the semi-volatiles in the ash fill and waste.
 - December 10, 2008, 6:35 PM, electronic mail from Bill Scott (Gonzalez Saggio & Harlan LLP) to Jennifer Borski (Department) and copied to Robert Buckingham (Community Development Authority for the City of Neenah) and Lou Pieh (Gonzalez Saggio & Harlan LLP) and titled *Neenah Application – error in addresses subject to Application* that removes 235 Main Street and 232 West Wisconsin Street, Neenah, Wisconsin from the exemption application.
 - December 11, 2008, 5:23 PM, electronic mail from Lou Pieh (Gonzalez Saggio & Harlan LLP) to Jennifer Borski (Department) and titled *RE: 4 issues from you and Gary* that included revised versions of Exhibits B and C to Section IV.A. as an attachment.
 - December 16, 2008, 3:31 PM, electronic mail from Bill Scott (Gonzalez Saggio & Harlan LLP) to Jennifer Borski (Department) and copied to Lou Pieh (Gonzalez Saggio & Harlan LLP), Skip Glor (Northern Environmental), Jonathan Lewis (Northern Environmental) and Robert Buckingham (Community Development Authority for the City of Neenah) and titled *RE: Questions for Neenah Exemption*, that clarifies the status of buildings 15, 17, 40 and 41 and foundations.
 - December 16, 2008, 3:48 PM, electronic mail from Jonathan Lewis (Northern Environmental) to Jennifer Borski (Department) and Bill Scott (Gonzalez Saggio & Harlan LLP) and copied to Lou Pieh (Gonzalez Saggio & Harlan LLP), Skip Glor (Northern Environmental), and Robert Buckingham (Community Development Authority for the City of Neenah) and titled *RE: Questions for Neenah Exemption*, that clarifies the status of buildings 15, 17, 40 and 41 and foundations.
 - December 17, 2008, 10:58 AM, electronic mail from Jonathan Lewis (Northern Environmental) to Jennifer Borski (Department) and copied to Bill Scott (Gonzalez Saggio & Harlan LLP), Lou Pieh (Gonzalez Saggio & Harlan LLP), Skip Glor (Northern Environmental), and Robert Buckingham (Community Development Authority for the City of Neenah) and titled *RE: Neenah Site Wide Exemption Updated Fig 2* that includes the attachment, 121708 FIG 2.pdf, a site-wide map updated December 17, 2008 showing exemption boundaries with respect to soil boring and monitoring well locations and former building locations. The December 17, 2008 version of Figure 2 replaces the version of Exhibit A to Section II submitted with the application and is labeled *Revised Exhibit A to Section II (12/17/08)*, Borehole, Groundwater and Vapor Well Locations, Figure 2 (Revised 12/17/08).
 - December 18, 2008, 11:41 AM, electronic mail from Bill Scott (Gonzalez Saggio & Harlan LLP), to Jennifer Borski (Department) and copied to Lou Pieh (Gonzalez Saggio & Harlan LLP), Bruce Urben (Department), Robert Buckingham (Community Development Authority for the City of Neenah) and Jim Godlewski (City of Neenah) and titled *Neenah CDA's Exhibit AA to Sec. V. B.* with attachment *L-Borski re Exhibit AA to VB 20081218.pdf* that is the final addendum to the application: a cover letter to the final Exhibit AA to Section V. B. that is a description of the cap inspection protocol, cap maintenance protocol, sewer and utility construction and potential for the migration of contaminated water.
6. Additional facts relevant to the review of the grant of exemption modification request include the following:

Conditional Case-by-Case Grant of Exemption
P H Glatfelter Redevelopment – Base Construction
WDNR VPLE #: 06-71-551109
WDNR Gen Prop #: 07-71-550924 & 07-71-552208
WDNR ERP #: 02-71-550735

- This exemption applies to property at 201, 207, 225 and adjacent to 225 West Wisconsin Avenue, Neenah, Wisconsin (“the Property”) under WDNR VPLE #: 06-71-551109, WDNR General Property #: 07-71-550924, WDNR General Property #: 07-71-552208 and WDNR ERP #: 02-45-550735. The boundaries of the Property are shown on *Revised Exhibit A to Section II (12/17/08)*, Borehole, Groundwater and Vapor Well Locations, Figure 2 (Revised 12/17/08), which is attached and made part of this exemption.
- The former P H Glatfelter mill at 201, 207 and 225 West Wisconsin Avenue, Neenah, Wisconsin was assigned WDNR General Property #: 07-71-550924 on February 11, 2008 and issued a *Development at Historic Fill Site Exemption* for demolition of above-grade structures on July 1, 2008. The Department accepted these parcels in the Voluntary Party Liability Exemption (VPLE) program on June 20, 2008 and assigned WDNR VPLE #: 06-71-551109.
- Canadian National – parcel B at “adjacent to 225 West Wisconsin Avenue, Neenah, WI” was assigned WDNR General Property #: 07-71-552208 on August 1, 2008 and issued a *Development at Historic Fill Site Exemption* for demolition of above-grade structures and construction of a steam line by Thermagen on August 28, 2008.
- The Community Development Authority of the City of Neenah purchased Canadian National – parcel B on November 5, 2008 and the Department accepted this parcel into the VPLE program under WDNR VPLE #: 06-71-551109 on November 11, 2008.
- Release of contaminants, including but not limited to metals, semi-volatile organic compounds (SVOCs), volatile organic compounds (VOCs) and polychlorinated biphenyls (PCBs), to native soil and groundwater from the ash fill and waste or non-point sources, has been assigned WDNR ERP # 02-71-550735 (P H Glatfelter (former) – Ash Fill). This environmental repair case includes release of contaminants to native soil and groundwater from ash fill and waste or non-point sources at 201, 207, 225 and adjacent to 225 West Wisconsin Avenue, Neenah, Wisconsin under WDNR General Property #: 07-71-550924, WDNR General Property #: 07-71-552208 and WDNR VPLE #: 06-71-551109. Remedial actions necessary regarding release of contamination from the ash fill and waste or non-point sources to native soil or groundwater, including final cap maintenance and adequate institutional controls, will be addressed under the NR 700 series for this environmental repair case.
- The NR 716, Wis. Adm. Code Site Investigation of the Property under s. 292.15(2)(a)1, Wis. Stats. (VPLE program) is not yet approved as of the date of this exemption.
- The application is specific for “site-wide approval to perform the following activities: (i) grading and filing to raise and contour the existing topography to meet the requirements of the Master Plan, (ii) install infrastructure such as utilities, sewers, water lines and publicly owned improvements such as roadways, walkways, curb and gutter, fire access lanes, certain parking surfaces and certain public plazas, (iii) install public/private historical or civic monuments, (iv) install pilings” for the Plexus Corporation Headquarters within the Property boundaries.
- Sub-grade foundation walls and basement floors are planned to remain in place during this phase of redevelopment as stated in Section V. B. items 1 and 4 and Section V.C item 2.d.2.a.

- Detailed redevelopment plans for the southwestern portion of the Property have not yet been submitted to the Department and are not part of this conditional grant of exemption.
 - The contractor for driving of the pilings for the Plexus Corporation Headquarters will be hired by the Community Development Authority for the City of Neenah.
7. If the conditions set forth below are complied with, the development of the property will not result in environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.

CONCLUSIONS OF LAW

1. The Department has the authority under s. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in s. NR 506.085, Wis. Adm. Code, if the proposed development will not cause environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.
2. The Department has authority to approve a grant of exemption with conditions if the conditions are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, or to assure that environmental pollution will not occur.
3. The conditions set forth below are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under s. NR 500.08(4), Wis. Adm. Code, to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption from the prohibition in s. NR 506.085, Wis. Adm. Code for development on a property which contains solid waste as proposed in the submittal dated December 3, 2008 and addendums dated December 4, December 8, December 11 and December 18, 2008 subject to the following conditions:

1. No action related to the development of the Property may be taken which will cause a significant adverse impact on wetlands as provided in ch. NR 103, Wis. Adm. Code.
2. No action related to the development of the Property may be taken which will cause a significant adverse impact on critical habitat areas, as defined in s. NR 500.03(55), Wis. Adm. Code.
3. No action related to the development of the Property may be taken which will cause a detrimental effect on any surface water, as defined in s. NR 500.03(62), Wis. Adm. Code.

Conditional Case-by-Case Grant of Exemption
P H Glatfelter Redevelopment – Base Construction
WDNR VPLE #: 06-71-551109
WDNR Gen Prop #: 07-71-550924 & 07-71-552208
WDNR ERP #: 02-71-550735

4. No action related to the development of the Property may be taken which will cause a detrimental effect on groundwater, as defined in s. NR 500.03(62), Wis. Adm. Code, or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard at a point of standards application as defined in ch. NR 140, Wis. Adm. Code.
5. No action related to the development of the Property may be taken which will cause a migration and concentration of explosive gases in any structures in excess of 25% of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the soils outside of the limits of solid waste disposal within 200 feet of the Property boundary or beyond the Property boundary in excess of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the air outside of the limits of solid waste disposal within 200 feet of the landfill boundary or beyond the landfill Property boundary in excess of the lower explosive limit for such gases at any time.
6. No action related to the development of the Property may be taken which will cause an emission of any hazardous air contaminant exceeding the limitations for those substances contained in s. NR 445.03, Wis. Adm. Code.
7. No action related to the development of the Property may be taken which will cause an exceedance of a soil clean up standard in ch. NR 720, Wis. Adm. Code.
8. This exemption shall transfer with changes in Property ownership. In accordance with s. 289.46(2), Wis. Stats., any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.
9. This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the Department for approval.
10. Removal of at-grade or sub-grade structures or any development on the Property beyond that proposed in the application must be reviewed under a separate application. This includes, but is not limited to, specific needs for individual development in the southwestern portion as shown in Exhibit C to Section V. B ("Future Glatfelter West Development Conceptual Site Plan").
11. Beneficial reuse of crushed concrete and demolition material on the Property as fill as discussed in Section V. B. items 1 and 4 and Section V.C. item 2c2 is subject to the requirements of ch. NR 538, Wis. Adm. Code.
12. Ash fill and waste excavated during trenching of infrastructure on the Property may be replaced in its original location regardless of volume, as long as the ash fill and waste is not buried deeper than removed, is replaced above the water table and is not a hazardous waste.

13. Temporary storage of contaminated soils on or off site must be in compliance with ch. NR 718, Wis. Adm. Code and the NR 500 series as proposed in Section V. C. item 2b.
14. Relocation and/or disposal of any solid waste or impacted soils on or off site as proposed in Section V.C. items 1, 2a, 2b4 and 2c1bi and in Exhibit W to Section V.B. ("Description of Trenching and Spoils Volumes", Section "Volume Capacity for Disposal of Spoils") will require review and approval by the Waste and Materials Management ("WMM") Program and possibly the Remediation and Redevelopment ("RR") Program.
15. Prior to approval for on-site disposal of excavated ash fill and waste, parameters listed in NR 538, Wis. Adm. Code must be analyzed and submitted to the WMM Program for review.
16. Based on existing soil data, it is unlikely that the ash fill and waste excavated from the Property will meet the requirements in the NR 500, Wis. Adm. Code series for definition as a Low Hazardous Waste, as indicated in Section V.C item 2.c.1.b.
17. Soils with PCBs greater than 10 parts per million (ppm) must be removed and properly disposed. Soils with PCBs greater than 1 ppm but less than 10 ppm may remain in place with proper institutional controls.
18. All utilities should be constructed to prevent water that has been in contact with ash fill and waste from migrating, especially to access points such as manholes and surface water. Specifically, storm sewers need to be installed with gaskets. More permeable bedding material for underground utilities can also carry water that has been in contact with ash fill and waste away from the Property towards other locations or surface water. Seals should be installed to prevent this migration. The Community Development Authority for the City of Neenah, their contractors, developers and successors at the Property must adhere to the Proposal 3 detailed in the *Proposals to Address Cap and Pile Issues*, dated December 18, 2008, and submitted as Exhibit AA to Sec. V. B.
19. The Department understands that specific infrastructure plans have not been developed for the west development area, as shown on Exhibit C to Section V. B., but construction of utilities in the west development area will be performed in accordance with plans and requirements of the east development area, as shown on Exhibit D to Section V. B. (C300, Site Utility Plan), specifically, Exhibits E-H to Section V. B. (C301 – C303, C100)
20. The Community Development Authority for the City of Neenah, their contractors, developers and successors at the Property must adhere to the Proposal 1: Cap Inspection Protocol and Proposal 2: Cap Maintenance Protocol detailed in the *Proposals to Address Cap and Pile Issues*, dated December 18, 2008, and submitted as Exhibit AA to Sec. V. B. until such time as the final site-wide cap is in place and alternative inspections and maintenance are required by the Department.
21. Pilings proposed in Exhibit X to Section V. B. for the Plexus Corporation Headquarters are approved as part of this exemption. A separate application must be submitted for pilings and caissons necessary for specific redevelopment not included in this application.

Therefore, this exemption does not include a general approval for installation of pilings and caissons at the Property, as proposed in Section V.C. item 2.c.5.

22. Jennifer Borski of the Department must be notified by phone at (920) 424-7887 prior to initiation of construction of pilings for the Plexus Corporation Headquarters.
23. Institutional controls required for the property by the RR and WMM Programs must be implemented.

The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time if, in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this grant of exemption do not supersede or replace any previous conditions of approval for this Property.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

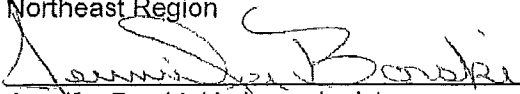
For judicial review of a decision pursuant to section 227.52 and 227.53, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: December 18, 2008

DEPARTMENT OF NATURAL RESOURCES
For the Secretary

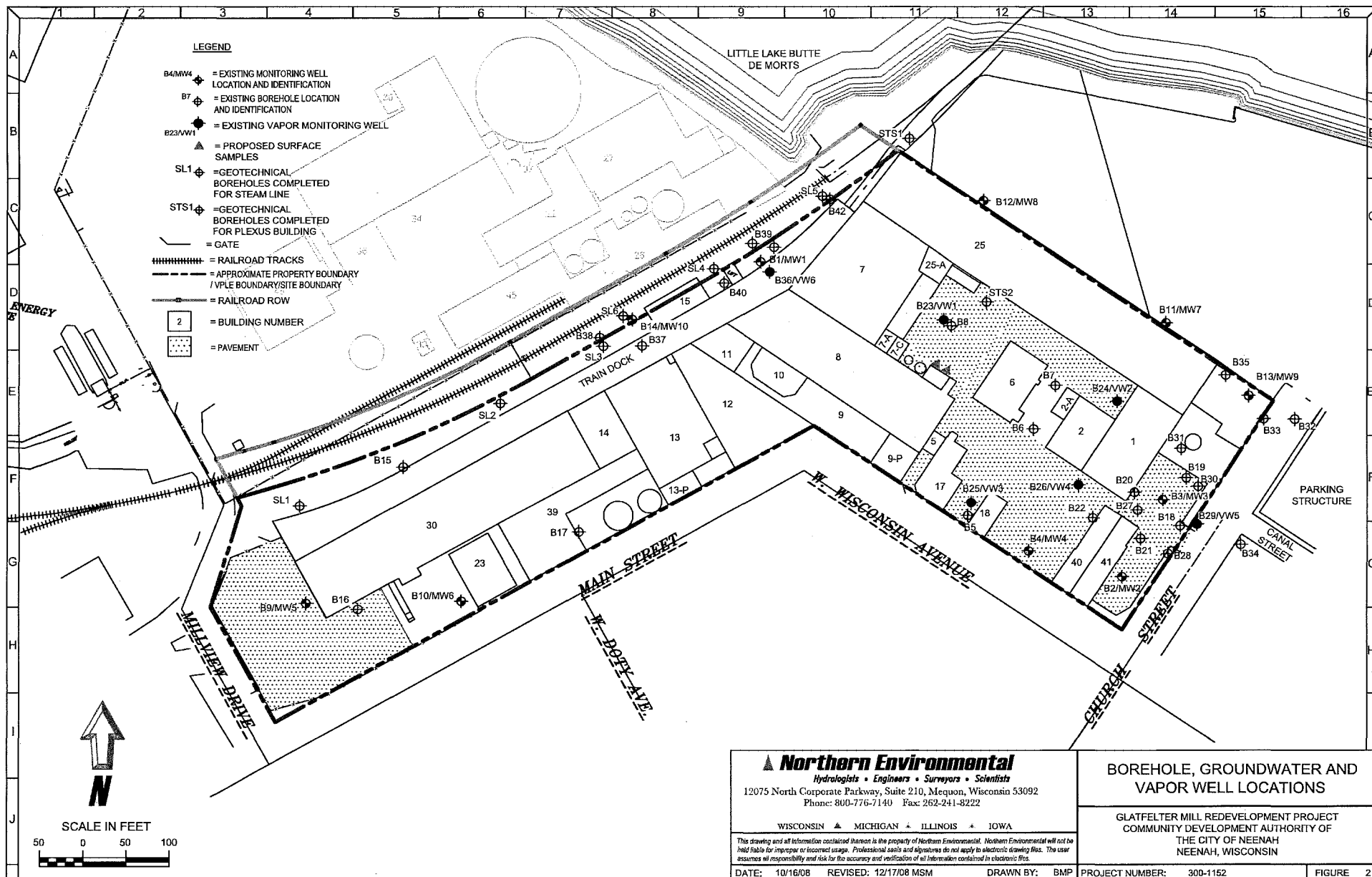


Bruce G. Urban
Northeast Region



Jennifer Borski, Hydrogeologist
Northeast Region

Revised Exhibit A to Section II (12/17/08)



<p>Northern Environmental Hydrologists • Engineers • Surveyors • Scientists 12075 North Corporate Parkway, Suite 210, Mequon, Wisconsin 53092 Phone: 800-776-7140 Fax: 262-241-8222</p>		<p>BOREHOLE, GROUNDWATER AND VAPOR WELL LOCATIONS</p>	
<p>WISCONSIN • MICHIGAN • ILLINOIS • IOWA</p>		<p>GLATFELTER MILL REDEVELOPMENT PROJECT COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF NEENAH NEENAH, WISCONSIN</p>	
<p>DATE: 10/16/08</p>	<p>REVISED: 12/17/08 MSM</p>	<p>DRAWN BY: BMP</p>	<p>PROJECT NUMBER: 300-1152</p>
			<p>FIGURE 2</p>



December 4, 2008

R + R - OSH
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DEC 03 2008

Jennifer Borski
Hydrogeologist
Wisconsin Dept. of Natural Resources
625 E County Road Y, Suite 700
Oshkosh, WI 54901

TRACKED ☐
REVIEWED ☐

*Incorporated into
exemption*

RE: Application for Site-Wide Historic Fill Site Exemption

Dear Jennifer:

Enclosed is an executed version of the "Agreement of Purchase and Sale" for the Canadian National property. This document should replace Exhibit C to Section III of the Exemption to Construct application submitted on December 4, 2008.

Best regards,

Lou Pieh

GONZALEZ SAGGIO & HARLAN LLP
Attorneys at Law



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DEC 10 2008

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REVIEWED ☐

December 8, 2008

VIA FED EX

Ms. Jennifer Borski, Hydrogeologist
Wisconsin Department of Natural Resources
625 E. County Road Y, Suite 700
Oshkosh, WI 54901

Re: Additional Exhibits to Site-wide Exemption to Construct Application

Dear Ms. Borski:

Enclosed please find the following additional exhibits to the Exemption to Construct application submitted on Wednesday, December 3, 2008.

- incorp in application*
1. Revised Exhibit A to Section II (Borehole, Groundwater and Vapor Well Locations).
 2. Revised Exhibit B to Section IV.A. (Analytical Tables). *- later replaced again*
 3. Revised Exhibit C to Section IV.A. (Analytical Tables). *- not replaced*
 4. New—Exhibit V to Section V.B. (Bid Packages).
 5. New—Exhibit W to Section V.B. (Description off Trenching and Spoils Volumes).
 6. New—Exhibit X to Section V.B. (Piling 1).
 7. New—Exhibit Y to Section V.B. (Construction Details).
 8. New—Exhibit Z to Section V.B. (Multiple Support Piling Seal Detail).

Very truly yours,

Lou J. Pieh

LJP/mkr

Enclosures

cc: Robert L. Buckingham (w/encs.)
Bruce Urben (w/encs.)

GONZALEZ SAGGIO & HARLAN LLP
Attorneys at Law

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December 11, 2008

VIA FED EX

Ms. Jennifer Borski, Hydrogeologist
Wisconsin Department of Natural Resources
625 E. County Road Y, Suite 700
Oshkosh, WI 54901

*Incorporated
in application*

Re: Additional Exhibits to Site-wide Exemption to Construct Application

Dear Ms. Borski:

Enclosed are revisions to Exhibits B and S to Section V.B. Per your request, sheet numbers and titles have been added to each of these documents. If you have any question or comments, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. Pieh".

Lou J. Pieh

LJP/mkr

Enclosures

cc: Robert L. Buckingham (w/encs.)
Bruce Urban (w/encs.)

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December 18, 2008

Jennifer Borski
Hydrogeologist
Wisconsin Dept. of Natural Resources
625 E County Road Y, Suite 700
Oshkosh WI 54901

RE: Final Supplement to Application for Site-Wide Historic Fill Site Exemption

Dear Jennifer:

This is to submit the final supplement to the application of the Community Development Authority for the City of Neenah (the "CDA") for an exemption from solid waste rules to allow construction on a historic fill site.

Please find the CDA's Final Proposal Addressing Cap and Pile Issues, Exhibit AA to Sec. V.B. of the Application for Site-Wide Exemption To Construct. The CDA understands this is the final application material needed by the Department, and that the next step is for the Department to issue the Exemption.

On behalf of the CDA and its outside experts, we pledge to work closely with you on this project to achieve the objectives of both entities. We look forward to that interaction as we confront and overcome the challenges that lie ahead, and we are confident that the City of Neenah and State of Wisconsin will be bettered by our collective efforts.

GONZALEZ SAGGIO & HARLAN LLP
Attorneys at Law

www.gshlp.com

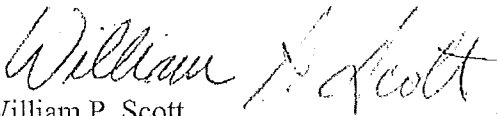
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West Des Moines

Jennifer Borski
Page 2
December 18, 2008

Thank you for your dedication and perseverance in seeing this effort through to a timely completion!

Sincerely,


William P. Scott

Enclosure

cc: Bruce Urban
Robert L. Buckingham
James Godlewski
Jonathan Lewis

Borski, Jennifer - DNR

From: Bill Scott [Bill_Scott@gshllp.com]
Sent: Monday, December 08, 2008 10:33 AM
To: Borski, Jennifer - DNR
Subject: RE: Table of Contents for Specs

Jennifer:

It is hard to say what you need. Please note the following re that H Pile Bid Spec:

page 1, line 16 shows a "tip elevation" which means the deepest penetration will go that elevation, about 40 feet bgs

page 4, lines 13 through 17, show that the immediate vicinity of each pile location will be saw cut to allow the driving, and then sealed in the manner shown on the detail by Northern Environmental.

William P. Scott

Gonzalez Saggio & Harlan LLP
225 East Michigan Street, 4th Floor
Milwaukee, WI 53202
Tel 414-755-8144 Fax 414-277-8521
Bill_Scott@gshllp.com

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Monday, December 08, 2008 10:09 AM
To: Lou Pieh; Bill Scott
Subject: RE: Table of Contents for Specs

The Steel H Pile section is 02463, which is not listed on this TOC summary.

I'm not sure that I need this now that I have pages 1-4 of the bid docs.

From: Lou Pieh [mailto:Lou_Pieh@gshllp.com]
Sent: Saturday, December 06, 2008 2:11 PM
To: Bill Scott
Cc: Borski, Jennifer - DNR
Subject: Table of Contents for Specs

Bill,

I reviewed the specs, and it turns out the Table of Contents is comprehensive. It's a bit weird because of the type of numbering, however, it covers everything within the specs. For easier reading, I created a separate document for your reference. Please let me know if this is helpful.

Thanks,

12/18/2008

Lou

Luseni (Lou) Pieh
Gonzalez Saggio & Harlan LLP
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Attorneys at Law

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12/18/2008

Borski, Jennifer - DNR

From: Bill Scott [Bill_Scott@gshllp.com]
Sent: Monday, December 08, 2008 11:26 AM
To: Borski, Jennifer - DNR
Subject: Neenah Site-Wide Exemption -- Semi-Volatiles

Jennifer:

This message is intended to explore how the CDA may address your comment on whether to open a new R&R case on the semi-volatiles. I do not believe that is necessary. Read this and let me know what you think. A valid alternative finding and conclusion regarding semi-volatile organics and Ash Fill for the Site Wide Exemption is as follows:

The apparent method of filling, involving numerous small loads, lends itself to the probability that the chemical nature of the Ash Fill is not consistent or homogeneous. Thus, anomalous detections of semi-volatiles or other ancillary compounds are attributed to the Ash Fill, but deemed uncharacteristic of the Ash Fill as a unit. Because significant concentrations of semi-volatiles are not detected in groundwater and therefore are not being mobilized from soil to groundwater, the CDA believes that the capping and other engineering and institutional controls proposed as part of the Site-Wide Exemption will be adequately protective of human health and the environment with respect to the semi-volatiles in the Ash Fill, other fill and native sediments. Consequently, the CDA proposes that the proposed capping and other engineering and institutional controls are an appropriate and sufficient response to all of the characteristic and uncharacteristic contaminants attributed to the Ash Fill.

Bill.

William P. Scott

Gonzalez Saggio & Harlan LLP
225 East Michigan Street, 4th Floor
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Tel 414-755-8144 Fax 414-277-8521
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Borski, Jennifer - DNR

From: Bill Scott [Bill_Scott@gshllp.com]
Sent: Wednesday, December 10, 2008 6:35 PM
To: Borski, Jennifer - DNR
Cc: RBuckingham@ci.neenah.wi.us; Lou Pieh
Subject: Neenah Application - error in addresses subject to Application

Jennifer:

This is to notify you of a typographical error in the Application for Exemption. The error is Section II "Location and Address" where 235 Main and 232 Wisconsin should NOT have been included.

Please consider those addresses formally withdrawn from the Application and notify me if I need to prepare a new cover page or otherwise correct the error.

Thank you, Bill.

William P. Scott

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Milwaukee, WI 53202
Tel 414-755-8144 Fax 414-277-8521
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Borski, Jennifer - DNR

From: Lou Pieh [Lou_Pieh@gshllp.com]
Sent: Thursday, December 11, 2008 5:23 PM
To: Borski, Jennifer - DNR
Subject: RE: 4 issues from you and Gary

Attachments: updated data_001.pdf



updated
ata_001.pdf (1 Mi

Jennifer,

Attached are revised versions of Exhibits B and C to Section IV.A.
These exhibits replaced the ones previously submitted. Please contact me if you have any additional questions or comments.

Thanks,

Lou

Luseni (Lou) Pieh
Gonzalez Saggio & Harlan LLP
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Fourth Floor
Milwaukee, Wisconsin 53202
414-277-8500
414-277-8521 (Fax)

-----Original Message-----

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Thursday, December 11, 2008 1:41 PM
To: Bill Scott
Cc: Lou Pieh; Lewis, Jonathan C.
Subject: RE: 4 issues from you and Gary

Exhibit B to Sec V. B. - Need title and sheet # Exhibit S to Sec V. B. - Need title and sheet #

I received the letter from Lou dated 12/8/08 and the attached revised and new exhibits for the application (# 1-8).

1 - replaced existing exhibit

2 - Exhibit B to Sec V. B. (soil data tables) - the dates on Table 1b, page 2 of 3, are still incorrect for B23, B24 & B25. Please update this page and submit electronically.

3 - Exhibit C to Sec V. B. (groundwater data tables) - the revised tables do not include 11/08 data and I did not replace the existing exhibit. I only need the compound abbreviation for 1,1,2-TCA updated on table 2b.

Please update this page and submit electronically.

4-8 - new exhibits inserted in application

-----Original Message-----

From: Bill Scott [mailto:Bill_Scott@gshllp.com]
Sent: Thursday, December 11, 2008 10:44 AM
To: Borski, Jennifer - DNR
Subject: RE: 4 issues from you and Gary

Are you waiting for anything else from me?

William P. Scott

Gonzalez Saggio & Harlan LLP
225 East Michigan Street, 4th Floor
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Bill_Scott@gshllp.com

-----Original Message-----

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Thursday, December 11, 2008 10:43 AM
To: Bill Scott
Subject: RE: 4 issues from you and Gary

Thanks for the update.

-----Original Message-----

From: Bill Scott [mailto:Bill_Scott@gshllp.com]
Sent: Thursday, December 11, 2008 10:41 AM
To: Borski, Jennifer - DNR
Subject: 4 issues from you and Gary

I hope to have 4 proposals to you very soon regarding the 4 issues you and Gary raised. The proposals are draft now. I need to hear from one engineer and one geologist, and then they will be final.

William P. Scott

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Borski, Jennifer - DNR

From: Bill Scott [Bill_Scott@gshllp.com]
Sent: Tuesday, December 16, 2008 3:31 PM
To: Borski, Jennifer - DNR
Cc: Lou Pieh; RBuckingham@ci.neenah.wi.us; Lewis, Jonathan C.; Glor, Skip
Subject: RE: Questions for Neenah Exemption
Importance: High

Jennifer:

1. Bldg. 15 is fully demolished. Second part of the question: Yes. CDA now owns the south spur of CN ROW.
2. 40 and 41 are demolished. 17 is pending our submittal of Salvage Plan for Chip Brown's approval (Wis. Hist. Society).
3. All foundations and basements on the mill property will remain.

William P. Scott

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Bill_Scott@gshllp.com

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Tuesday, December 16, 2008 3:18 PM
To: Bill Scott
Cc: Lou Pieh; RBuckingham@ci.neenah.wi.us; Lewis, Jonathan C.; Glor, Skip
Subject: Questions for Neenah Exemption
Importance: High

Please reply ASAP with quick answers to the following:

1. Is building 15 completely demolished? Will all remaining work take place on CDA property as opposed to CN-RR property? (Recall that a portion of building 15 extended onto CN-RR property) This is important for correct wording of the exemption.
2. What is the status of buildings 17, 40 and 41 as historic buildings. I know two were cleared, maybe all three. Are they demolished?

12/18/2008

3. Confirm that all foundations and substructures still plan to remain in place, including those for buildings 15, 17, 40 and 41.

Thanks.

Jennifer Borski

Hydrogeologist
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731

(☎) phone: (920) 424-7887

(☎) fax: (920) 424-4404

(✉) e-mail: jennifer.borski@wisconsin.gov

Internet address: www.dnr.wi.gov/org/aw/rr

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Borski, Jennifer - DNR

From: Lewis, Jonathan C. [Jonathan.Lewis@northernenvironmental.com]
Sent: Tuesday, December 16, 2008 3:48 PM
To: Borski, Jennifer - DNR; Bill Scott
Cc: Lou Pieh; RBuckingham@ci.neenah.wi.us; Glor, Skip
Subject: RE: Questions for Neenah Exemption
Attachments: image001.png

Jennifer,

Buildings 15, 40, and 41 have been demolished and their foundations and basement floors will remain in place. Building 17 is still standing and slated for demolition pending receipt of bids. The Building 17 foundation and basement floor will be left in place.

CDA owns the property where building 15 was.

Jonathan Lewis, PG

Senior Registered Geologist



Direct: 262-643-9162

Main: 262-241-3133
Fax: 262-241-8222
Toll: 800-776-7140

12075 Corporate Parkway, Suite 210
Mequon, WI 53092
www.northernenvironmental.com

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Tuesday, December 16, 2008 3:18 PM
To: Bill Scott
Cc: Lou Pieh; RBuckingham@ci.neenah.wi.us; Lewis, Jonathan C.; Glor, Skip
Subject: Questions for Neenah Exemption
Importance: High

Please reply ASAP with quick answers to the following:

1. Is building 15 completely demolished? Will all remaining work take place on CDA property as opposed to CN-RR property? (Recall that a portion of building 15 extended onto CN-RR property) This is important for correct wording of the exemption.
2. What is the status of buildings 17, 40 and 41 as historic buildings. I know two were cleared, maybe all three. Are they demolished?
3. Confirm that all foundations and substructures still plan to remain in place, including those for buildings 15, 17, 40 and 41.

Thanks.

Jennifer Borski
Hydrogeologist

12/18/2008

Remediation and Redevelopment Program
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(✉) e-mail: jennifer.borski@wisconsin.gov

Internet address: www.dnr.wi.gov/org/aw/rr

Borski, Jennifer - DNR

From: Lewis, Jonathan C. [Jonathan.Lewis@northernenvironmental.com]
Sent: Wednesday, December 17, 2008 10:58 AM
To: Borski, Jennifer - DNR
Cc: Bill Scott; Lou Pieh; RBuckingham@ci.neenah.wi.us; Glor, Skip
Subject: RE: Neenah Site Wide Exemption Updated Fig 2
Attachments: image001.png; 121708 FIG 2.pdf

Jennifer,
Attached is updated Figure 2 with requested corrections.
Note that fence near Building 15 is removed for clarity and since it no longer is present.

Jonathan Lewis, PG

Senior Registered Geologist



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Fax: 262-241-8222
Toll: 800-776-7140

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Mequon, WI 53092
www.northernenvironmental.com

From: Borski, Jennifer - DNR [mailto:Jennifer.Borski@wisconsin.gov]
Sent: Tuesday, December 16, 2008 3:40 PM
To: Lewis, Jonathan C.
Cc: Glor, Skip
Subject: update Fig 2
Importance: High

Jonathan,

I plan to include Figure 2 of the application as an attachment to the exemption as it includes a complete view of the Property and boundaries. Please update to correctly reflect the location of building 15 and fenced area with respect to the soil borings and wells and resubmit. Thanks

Jennifer Borski

Hydrogeologist
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(✉) e-mail: jennifer.borski@wisconsin.gov
Internet address: www.dnr.wi.gov/org/aw/rr

12/18/2008

Borski, Jennifer - DNR

From: Bill Scott [Bill_Scott@gshllp.com]
Sent: Thursday, December 18, 2008 11:41 AM
To: Borski, Jennifer - DNR
Cc: Urban, Bruce G - DNR; RBuckingham@ci.neenah.wi.us; JGodlewski@ci.neenah.wi.us; Lou Pieh
Subject: Neenah CDA's Exhibit AA to Sec. V.B.
Attachments: L- Borski re Exhibit AA to VB 20081218.pdf



L- Borski re
Exhibit AA to VB .

Jennifer:

The hard copy is in the mail to you. If you need it by Fed X or want it sent to another person, let me know now.

The cc's are going only by this email. If any of those people want hard copy, they should reply to me.

Thanks.

William P. Scott

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Exhibit AA to Sec V. B.

Proposals to Address Cap and Pile Issues
December 18, 2008

Proposal 1. Cap Inspection Protocol.

Both the Phase A and Phase B portions of the Site (the entire Site) will be inspected in 2009 as soon as weather conditions permit; such inspection shall be completed no later than June 1, 2009. The existing caps will be identified, categorized, portrayed on a map of the Site and their condition shall be described. The work will be performed by the CDA or its contractor. The resulting report will be maintained by the CDA and provided to DNR. Such inspection will be updated every four months thereafter for so long as substantial change is occurring to the cover at the Site, and the Site shall be inspected annually thereafter until the entire Site has been capped with final caps. If any portion of the site is completed and under lease by or ownership of a developer or new owner, the CDA may transfer the cap inspection responsibilities to such developer or new owner, only after providing DNR will satisfactory proof that such party has accepted such responsibility. As part of such transfer of responsibility, CDA will require such party to provide CDA with a copy of each inspection, and CDA will maintain all such inspection logs and related documents at a central location in the city of Neenah.

The existing structures and paved areas that serve as caps and the existing uncapped areas will be shown on a diagram of the Site. The diagram will be updated at least annually so long as substantial change is occurring to exposed surfaces at the Site. The caps will be categorized in the following manner: (i) interim caps that consist of asphalt ("Asphalt Caps"); (ii) interim caps that consist of concrete ("Interim Concrete Caps"); (iii) existing or new caps that consist of concrete that will remain as a final cap ("Final Concrete Caps"); (iv) new interim clay caps that are installed using one foot of compacted clay soil, topsoil and seed; (v) new caps that consist of new structures ("Final Structure Caps"); (vi) new caps to be constructed of finish asphalt that will remain as a final cap ("Final Asphalt Caps"); and (vii) areas that are currently uncapped ("Uncapped Areas").

Each Cap will be described, its condition noted, and an assessment given as to the amount of repair or attention to the caps required to maintain protections. The assessment will include recommended repair methods if repairing is recommended, the recommended sequence for completing the recommended repairs will be presented (based on cap condition, proximity to known sites of hazardous substance release and other site activities) and a schedule for performing any recommended repairs will be presented. The Final Caps will be inspected at least annually consistent with good commercial practice pertaining to maintenance of the type of structure or material presented by each cap. Once a final cap is in place, there will be no further inspection of those portions of any cap that is positioned under any Final Cap.

Proposal 2. Cap Maintenance Protocol.

A. The CDA does not believe there will be any Interim Asphalt Cap within the Phase B Construction Area. Each Interim Asphalt Cap within the Phase A Construction Area will be replaced, repaired or restored to satisfactory condition to achieve its intended interim purpose (direct contact barrier or groundwater protection) as soon as demolition or construction conditions reasonably permit. The CDA may replace Interim Asphalt Caps with Interim Clay Soil Caps or other cap. If this substitution is made, clay soil caps will be covered with topsoil and seeded to protect the integrity of the interim cap. The CDA will implement reasonable means of preventing direct contact to waste and produce a barrier to groundwater infiltration in critical areas where known soil contamination exists. The materials used to protect these critical areas may include asphalt, clay, plastic covering or geotextiles or other measures so long as the effect achieved accomplishes the purpose of the cap. The final cover is anticipated to be in place in the Phase A area by October 1, 2009. During construction, the CDA and its contractors and any redevelopers and their contractors shall take reasonable and customary precaution not to leave open for any unreasonable period of time any trench or major cap penetration. Additionally, at least monthly the interim caps shall be inspected for any significant and unnecessary crevice, crack or other opening not required to complete construction of a final structure. Any unnecessary openings in Interim caps will be filled, sealed or covered to maintain the intended effectiveness of such cap.

B. Each Interim Concrete Cap within the Phase A Construction Area will be repaired, restored to satisfactory condition to achieve its purpose (direct contact barrier or groundwater protection) or replaced with a new cap by June 30, 2009. Each Interim Concrete Cap within the Phase B Construction Area will be repaired or restored to satisfactory condition to achieve its purpose (direct contact barrier or groundwater protection) as soon as demolition and construction conditions reasonably permit. The CDA anticipates completion of an interim cap over the entire Phase B area by October 1, 2009. During construction, the CDA and its contractors and any redevelopers and their contractors shall take reasonable and customary precaution not to leave open for any unreasonable period of time any trench or major cap penetration. Additionally, at least monthly the interim caps shall be inspected for any significant and unnecessary crevice, crack or other opening not required to complete construction of a final structure. Any unnecessary openings in Interim caps will be filled, sealed or covered with plastic to maintain the intended effectiveness of such cap.

C. Each Final Concrete Cap, whether new or not, will be described, its condition noted and if repair is recommended then a recommended sealing method shall be described, a recommended sequence for repair presented (based on cap condition, proximity to known sites of hazardous substance release and other site activities) along with a schedule for performing any recommended work.

D. New Caps, whether Clay, Asphalt, Concrete, or New Buildings, will be mapped and described and a recommended sequence for further inspection and maintenance presented (based on cap condition, proximity to known sites of hazardous substance release and other site activities). However, maintenance of the New Cap will eliminate the need to maintain any old cap lying beneath such New Cap. New Caps will be inspected and maintained at a

frequency consistent with good commercial practice pertaining to maintenance of the type of structure or material presented by each cap.

E. New and Interim Caps in Phase B Construction Area. The development and near-term capping of that area have not yet been determined. The CDA proposes to address this issue in the future, after demolition of the existing above-ground structures and additional investigation of soil and groundwater (proposed elsewhere) is complete. The CDA believes that interim capping of this area beyond preservation and repair of existing slabs is not necessary, but actual capping recommendations may differ depending on the results of future investigation. That area will not be accessible to the general public during construction, and upon completion of construction, the entire area will be capped.

F. Cap Maintenance Record. A barrier maintenance record will be maintained by the CDA and kept in Neenah, to show the work taken over time to inspect and maintain each cap within the Site area.

Proposal 3. Sewer and Utility Construction.

The storm sewer and sanitary sewer will be constructed in accordance with the Standard Specifications for Sewer and Water Construction in Wisconsin, Sixth Edition, Dec. 22, 2003 et al. The storm sewer construction will meet the standards typical for sanitary sewers which require a watertight system. The constructed storm sewer and sanitary sewer will include flexible watertight seals at all foundation penetrations and pipe/manhole connections. All pipe joints will include watertight rubber gaskets. Manholes will be constructed with internal flexible watertight chimney seals to prevent water inflow at the casting/concrete riser interface. Manhole riser sections joints require a flexible butyl rubber gasket meeting ASTM C443.

Water Main will also be constructed to the requirements set forth in the Standard Specifications for Sewer and Water Construction in Wisconsin, Sixth Edition, Dec. 22, 2003 et al. Water systems are by necessity and code a pressurized self-contained water-tight system far exceeding the watertight requirements of a non-pressurized gravity flow sanitary sewer outlined above. There are no water manholes or vaults as part of the proposed system.

An additional provision will be added for all utility trenches requiring a clay trench dam at all property line crossings to prevent water migrating along the stone bedding/cover in the trench and leaving the site.

Our initial discussions with We Energies have the electrical equipment located above grade on concrete pads. Both gas and electric services to Plexus will be underground.

The maintenance plan for these utilities will include manhole inspections of the riser, pipe/manhole connections, chimney seal etc., annually at the same time as surface cap inspections. This will take place from inside the manhole.

Proposal 4. Potential for the Migration of Contaminated Water.

It is not expected that any significant migration of contaminated groundwater will occur along the pile surfaces. First, piles will be emplaced through the near-surface fill and terminate in native stiff clay-rich tills. The piles will not reach bedrock. No native laterally extensive high-permeability units (e.g., sand and gravel layers) have been encountered in the boreholes completed at the Site. Second, the groundwater quality in the area of the proposed piles is only marginally impacted by semi-volatile organic compounds and metals and the piling operation will not introduce new contaminants to the environment. There is contaminated soil and groundwater already in contact with the native clay till at the Site. Contaminated shallow groundwater within the area of proposed piling flows toward the Little Lake Buttes des Morts at horizontal hydraulic gradients on the order of 0.007 to 0.01 foot/foot, and is not expected to change flow direction because of the piles. Downward migration of shallow groundwater requires a downward hydraulic gradient and zone of higher permeability along the pile-soil interface. Downward hydraulic gradient at the Site has not been determined. Provided there is a downward hydraulic gradient at the Site, the marginally contaminated shallow groundwater would be further diluted by several orders of magnitude. In addition, the native clay particles will serve to attenuate ions in groundwater. Any slight degradation of groundwater quality resulting from downward migration of shallow groundwater that might occur presents no human health risk because no water supply wells are in the area and institutional controls will be used to ensure none are constructed. The stiff clay till is arguably not an aquifer capable of producing sufficient quantities of potable water due to its low (on the order of 1×10^{-6} cm/sec or less) natural hydraulic conductivity. H-piles likely will create a zone of disturbed soil that may have lower hydraulic conductivity than the surrounding native till; however, based upon the behavior of the upper native till, we expect that the disturbed soil will expand due to the release of the pre-existing natural pressure or stress. Northern Environmental observed that the soil sample volume expanded after it was sheared by the sampler shoe during direct-push soil sampling of the upper native till. The sampler shoe had a smaller diameter than the sample tube, but the soil expanded to fill the larger sampler tube. Thus there is reason to doubt that any significant increase in permeability will occur in the shear layer that will develop along the pile surfaces.

